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APPENDIX E  
GENERAL PERMIT ELIGIBILITY CRITERIA DOCUMENTATION

## **Appendix E**

### **General Permit Eligibility Criteria Documentation**

#### **Listed Species and Critical Habitat**

To be able to file under the General Permit the Phase II regulations require that the eligibility criteria for listed species and critical habitat are met. In order to demonstrate eligibility, the permittee must use the most recently approved Endangered and Threatened Species-County List available from EPA.

- **Criteria A:** No endangered or threatened species or critical habitat are in proximity of the MS4 or the point where authorized discharges reach the receiving waters; or
- **Criteria B:** In the course of a separate federal action involving the MS4, formal or informal consultation with the Fish and Wildlife Service (FWS) and/or the National Marine Fisheries Service (NMFS) under Section 7 of the Endangered Species Act (ESA) has been concluded and that consultation:
  - Addressed the effects of the MS4 storm water discharges, allowable non-storm water discharges, and discharge related activities on listed species and critical habitat; and
  - The consultation resulted in either a no jeopardy opinion or a written concurrence by FWS and/or NMFS on a finding that the storm water discharges, allowable non-storm water discharges, and discharge related activities are not likely to adversely affect listed species or critical habitat; or
- **Criteria C:** The activities are authorized under Section 10 of the ESA and that authorization addresses the effects of the storm water discharges, allowable Draft Permit for Review non-storm water discharges, and discharge related activities on listed species and critical habitat; or
- **Criteria D:** Using best judgment and knowledge, the effects of the storm water discharges, allowable non-storm water discharges, and discharge related activities on listed species and critical habitat have been evaluated. Based on those evaluations, a determination is made by the permittee that there is no reason to believe that the storm water discharges, allowable non-storm water discharges, and discharge related activities will jeopardize the continued existence of any species or result in the adverse modification or destruction of critical habitat.
- **Criteria E:** The storm water discharges, allowable non-storm water discharges, and discharge related activities were already addressed in another operator's certification of eligibility which includes the MS4 activities. If certification is under this criterion, the permittee agrees to comply with any measures or controls upon which the other operator's certification was based.

Woodard & Curran has reviewed these criteria and has submitted its conclusions to the U.S. Fish and Wildlife Service Office for verification. A copy of the correspondence is included in this Appendix.

## **Historic Properties**

Phase II regulations require that applicants determine whether their facility's storm water discharges, allowable non-storm water discharges, or construction of BMPs to control such discharges, has potential to affect a property that is either listed or eligible for listing on the National Register of Historic Places. The Town conducted a thorough review of historic properties in accordance with EPA/DEP guidance to determine conformance to the permit requirements.

In 1991, a Historic District Study Committee proposed, and the Town subsequently implemented, a plan to establish local historic districts in three of Acton's four village centers:

- South Acton,
- West Acton, and
- North Acton.

Several locations in Acton are listed on the National Register:

- Exchange Hall, Quimby Square on School Street
- Faulkner Homestead, High Street
- Hosmer House, 300 Main Street
- Jones Tavern, 128 Main Street

Also, the Isaac Davis Trail runs east to west between the towns of Acton and Concord.

The Pine Hawk archaeology site is located on an elevated terrace overlooking the Assabet River at the wastewater treatment plant location.

Woodard & Curran has reviewed the storm drain mapping for these locations and determined that the Town of Acton meets the eligibility criteria.



# United States Department of the Interior

FISH AND WILDLIFE SERVICE  
New England Field Office  
70 Commercial Street, Suite 300  
Concord, New Hampshire 03301-5087



August 4, 2003

Reference:

Project

NPDES stormwater discharge general permit

" " "  
" " "  
" " "

Location

Rockport, MA  
Leominster, MA  
Braintree, MA  
Acton, MA ←

Ronald St. Michel  
Robert Rafferty  
Woodard & Curran Inc.  
35 New England Business Center, Suite 180  
Andover, MA 01810

Dear Messrs. St. Michel and Rafferty:

This responds to your recent correspondence to our Regional Office requesting information on the presence of federally-listed and/or proposed endangered or threatened species in relation to the proposed activity(ies) referenced above.

Based on information currently available to us, no federally-listed or proposed, threatened or endangered species or critical habitat under the jurisdiction of the U.S. Fish and Wildlife Service are known to occur in the project area(s). Preparation of a Biological Assessment or further consultation with us under Section 7 of the Endangered Species Act is not required.

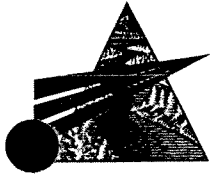
This concludes our review of listed species and critical habitat in the project location(s) and environs referenced above. No further Endangered Species Act coordination of this type is necessary for a period of one year from the date of this letter, unless additional information on listed or proposed species becomes available.

Thank you for your coordination. Please contact us at 603-223-2541 if we can be of further assistance. **In the future, in order to expedite your reply, please direct any inquiries of this nature to this office at the above address.**

Sincerely yours,

*Michael J. Amaral*

Michael J. Amaral  
Endangered Species Specialist  
New England Field Office



June 30, 2003

Mr. Paul Nickerson  
Chief of the Division of Threatened and Endangered Species  
U.S. Fish and Wildlife Service  
Northeast Region  
300 Westgate Center Drive  
Hadley, MA 01035

Re: Eligibility under NPDES General Permit for Stormwater Discharges from Small Municipal  
Separate Storm Sewer Systems, Town of Acton, MA

Dear Mr. Nickerson:

We are writing on behalf of the Town of Acton, Massachusetts, who is seeking coverage under the permit referenced above. We have contacted this agency as suggested in the guidance outlined in by the EPA in Addendum A of the General Permit for determining eligibility with regard to Endangered Species Act.

We have checked the endangered species list for Massachusetts (list enclosed) and find that there are two listed endangered species for the Middlesex County; the Bald Eagle and the Indiana Bat. We have also consulted the Critical Habitat designated in 50 CFR part 17 and 226 and find that there are no Critical Habitats in or near the Town of Acton. We consulted the Natural Heritage Program and find that there are eight Priority Habitats and eight Estimated Habitats in or near the Town of Acton.

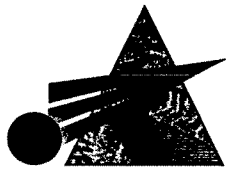
We feel that the Town of Acton can most likely claim eligibility under Criteria "A" (No endangered or threatened species or critical habitat are in proximity to the MS4 or the points where authorized discharges reach the receiving waters) or Criteria "D" (no adverse impact).

We understand that your agency may have more detailed information relative to the locations of the listed species; therefore we ask that you review this information with the enclosed map and make a determination as to whether you can endorse the selection of Criteria "A". If there are listed species in the proximity of the MS4 or its discharge, please provide any insight that will assist our evaluation under Criteria "D".

We would appreciate a timely response in order to satisfy the July 30 deadline. If you have any questions, please contact me directly. Thank you for your assistance.

Sincerely,  
WOODARD & CURRAN INC.

  
Robert Rafferty, PE  
Project Manager



**WOODARD & CURRAN**  
Engineering • Science • Operations

EJF/ejf  
Project Number: 212521

Enclosure

cc: Helen T. Priola, PE, Sr. Vice President  
Doug Halley, Director, Board of Health – Town of Acton